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No. 99-_____

In the Supreme Court of the United States

October Term, 1999

WILSON PARTNERS, L.P. and
ACADEMIC PROPERTIES, INC.

Petitioners

vs.

COMMONWEALTH OF PENNSYLVANIA,
BOARD OF FINANCE AND REVENUE,

Respondents

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, under this Court's decision in *Washington v. United States*, 460 U.S. 536 (1983), a state may constitutionally impose a realty transfer tax on a party purchasing real estate from an exempt federal agency at double the effective rate of tax imposed on a purchaser of real estate from a nonexempt entity.

2. Whether *Washington v. United States*, 460 U.S. 536 (1983), should be overruled to the extent that it justifies discriminatory state transfer tax treatment of a purchaser of real estate from a federal agency based upon the unrealistic assumption that a federal agency will voluntarily assume a transfer tax obligation that the agency has a constitutional right to avoid.

LIST OF INTERESTED PARTIES

The names of all parties who appeared in the Supreme Court of Pennsylvania are set forth in the caption. There is no parent or subsidiary company to be listed per Rule 29.6.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1999

No. 99-
WILSON PARTNERS, L.P.
and
ACADEMIC PROPERTIES, INC.,
Petitioners

v.

COMMONWEALTH OF PENNSYLVANIA,
BOARD OF FINANCE AND REVENUE,
Respondent

On Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

Petitioners Wilson Partners, L.P. and Academic Properties, Inc. respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania in these cases.

OPINIONS BELOW

The Opinion and Judgment of the Supreme Court of Pennsylvania, App. 1a-9a, is reported at 737 A.2d 1215 (Pa. 1999). The Opinion and Order of the Commonwealth Court of Pennsylvania, App. 10a-17a, is reported at 723 A.2d. 1079 (Pa. Cmwlth. 1999).

STATEMENT OF JURISDICTION

The Judgment of the Supreme Court of Pennsylvania was entered on October 1, 1999. The jurisdiction of this Court is conferred by 28 U.S.C. § 1257(a).

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The relevant provisions of the United States Constitution are reprinted at App. 19a. The relevant provisions of the Pennsylvania Realty Transfer Tax Act, 72 P.S. §§8101-C—8113-C, and regulations issued thereunder, 61 Pa. Code Chapter 91, are reprinted at App. 20a-22a. The relevant provisions of the Pennsylvania deed recording statutes, 21 P.S. §§351 and 444, are reprinted at App. 23a-24a.

STATEMENT OF THE CASE

These cases present the question whether the Commonwealth of Pennsylvania can constitutionally impose its realty transfer tax on parties purchasing real property from an exempt federal agency (here, the Federal Deposit Insurance Corporation) at twice the effective rate of tax imposed on parties purchasing real property from non-exempt parties.

These are appeals from a decision of the Pennsylvania Supreme Court affirming the denial of refunds of Pennsylvania Realty Transfer Tax paid on conveyances from the Federal Deposit Insurance Corporation (FDIC), an agency of the federal government, to the Petitioners, Wilson Partners, L.P. (Wilson, or taxpayer) and Academic Properties, Inc. (Academic, or taxpayer). Wilson is a Pennsylvania limited partnership with its principal place of business at 1325 Morris Avenue, Suite 201, Wayne, Pennsylvania. Academic is a Pennsylvania corporation with its principal place of business at 32nd and Chestnut Streets, Philadelphia, Pennsylvania.

In accordance with an agreement with the FDIC as Receiver for a failed bank,[1] Wilson took title to the bank's real estate on Lee Road in Chester County by a deed executed on January 13, 1994.

[1] Relevant portions of the agreement are set forth at App. 25a-32a.

On January 26, 1994, Wilson recorded the deed with the Office of the Recorder of Deeds, Chester County, Pennsylvania, and, as a precondition of recording the deed, paid Pennsylvania Realty Transfer Tax of $24,380 on the conveyance based on the actual cash consideration of $2,438,000. The $24,380 tax payment represented the entire transfer tax imposed by the Commonwealth on this transaction and was paid "under protest."

In accordance with a separate, unrelated agreement with the FDIC as Receiver for the same failed bank,[2] Academic took title to the bank's real estate in Philadelphia by deeds executed on February 4, 1994 and February 7, 1994. On February 24, 1994, Academic recorded the deeds with the Commissioner of Records of the City of Philadelphia and, as a precondition of recording the deeds, paid Pennsylvania Realty Transfer Tax of $69,920 on the conveyances based on the total actual cash consideration of $6,920,000. The $69,920 tax payment represented the entire transfer tax imposed by the Commonwealth on this transaction.

Taxpayers petitioned the Pennsylvania Department of Revenue (Department) for refunds of the transfer taxes paid on the conveyances. Taxpayers claimed refunds of at least half the amount of tax paid ($12,190 for Wilson; $34,960 for Academic), and alternatively all of it, because imposing the entire tax on the taxpayers constitutes a violation of their rights under the supremacy and equal protection clauses of the federal constitution. App. 2a, 11a. The Department denied the refund claims. Taxpayers timely appealed the Department's decisions to the Board of Finance and Revenue, which rejected the taxpayers' constitutional claims. App. 2a, 11a. Taxpayers filed timely appeals of the Board's orders to the Commonwealth Court of Pennsylvania, which also rejected the taxpayers' constitutional claims. App. 11a-16a. Further appeals were made to the Pennsylvania Supreme Court, which similarly rejected the taxpayers' constitutional claims. App. 4a-9a.

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[2] Relevant portions of the agreement are set forth at App. 33a-43a.

REASONS FOR GRANTING THE PETITION

Washington Does Not Support the Decision of the Pennsylvania Supreme Court

The Supreme Court of Pennsylvania held that doubling Pennsylvania Realty Transfer Tax on parties dealing with an exempt federal agency does not violate the United States Constitution, relying on this Court's decision in *Washington v. United States*, 460 U.S. 536 (1983) (5-4 decision). *Washington* provides no such authority.

The decision of the Pennsylvania Supreme Court results in a violation of the supremacy[3] and equal protection clauses[4] of the United States Constitution because the Pennsylvania tax statute requires that Petitioners—in order to record their deeds—pay twice the amount of tax the statute requires them to pay if they purchased property from a nonexempt party.

The Pennsylvania Supreme Court acknowledged the discrimination against Petitioners:

> We acknowledge that, viewing the transaction from Taxpayers' perspective, there is a degree of differential treatment, since Taxpayers bore exclusive liability for the taxes; whereas, those involved in transactions among private parties share liability jointly and severally.

App. 7a (n.10). However, the court mistakenly concluded that this disparate treatment lacked "constitutional significance" because Petitioners are "no worse off" when viewed from *Washington's* "wider perspective." *Id.*

There is indeed discrimination, and it does have constitutional significance because Petitioners clearly are "worse off" by dealing with the federal government, an exempt seller. Pennsylvania law re-

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[3] U.S. Const. art. VI, cl.2.

[4] U.S. Const. amend. XIV, §1, cl.4.

quires a purchaser to record its deed in order to preserve its title. 21 P.S. §§351, 444; *Smith v. Young,* 259 Pa. 367, 103 A. 63 (1918); *Gillespie v. Buffalo,* 17 Pa. Superior Ct. 569, 1901 Pa. Super. LEXIS 358 (1901). Pennsylvania's Realty Transfer Tax statute imposes a tax on "[e]very person who makes, executes, delivers, accepts or presents for recording any document," 72 P.S. §8102-C,[5] and requires payment of the tax as a precondition of recording the deed.[6] *See Commonwealth v. Willson Products, Inc.,* 412 Pa. 78, 194 A.2d 162 (1963) (Realty Transfer Tax Act taxes and intends to tax only transactions effectuated by documents that are to be recorded). The tax obligation is joint and several on the parties to the transaction. 72 P.S. §8102-C; 61 Pa. Code § 91.111(b). In Pennsylvania, a party paying all of a tax obligation that is jointly owed with one or more other parties has a right of contribution against the other parties for their *pro rata* share of the obligation. *Goldberg v. Altman,* 190 Pa. Superior Ct. 495, 500, 154 A.2d 279, 282 (1959); 8A *P.L.E.,* Contribution § 3 (1971); *see also Wilner v. Croyle,* 214 Pa. Superior Ct. 91, 99, 252 A.2d 387, 391 (1969). The Pennsylvania Supreme Court applied the rule of contribution in *In re Mellon's Estate,* 347 Pa. 520, 32 A.2d 749 (1943), with respect to estate taxes.

The combination of joint and several liability with the right of contribution means that the effective tax rate imposed by the statute on each nonexempt party is .5%, or one-half the stated 1% rate.

Pennsylvania law compelled Petitioners to record their deeds and, as a condition of doing so, required them to pay tax at twice the effective rate applicable to other nonexempt parties solely because the Petitioners purchased property from an exempt seller, the FDIC. As an agency of the federal government, the FDIC is statutorily ex-

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[5] Any one of the stated actions triggers the tax, but the tax is imposed only once with respect to a particular document. A document that is made, executed, delivered, accepted and recorded results in one tax, not five.

[6] 72 P.S. §§8105-C, 8108-C, 8110-C.

empt from the payment of tax.[7] The statute and the Department's regulation require a nonexempt party to a transaction to pay the portion of the tax that the exempt party would otherwise pay by reason of the joint liability:

> The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax.

72 P.S. §8102-C.2.

> The excluded [exempt] status of a party does not relieve the other parties to a transaction from the entire tax due. The tax liability of a nonexempt party to a transaction may be discharged by the other parties as they agree but without prejudice to the rights of the Commonwealth against nonexcluded [nonexempt] parties to the transaction.

61 Pa. Code § 91.192(b). Thus, the Petitioners were liable for the full amount of the tax because they had no right of contribution against the FDIC.

The Pennsylvania Supreme Court justified the discrimination on the basis of *Washington*. Although Petitioners disagreed with the Commonwealth's assertion that the parties' ability to negotiate saved the tax from unconstitutionality, none of the parties cited, discussed or briefed *Washington*. The Pennsylvania Supreme Court decided the appeals on the briefs without oral argument, providing no opportunity for the parties to express their views on *Washington*. The court analyzed *Washington* as follows:

> In *Washington*, the United States brought an action seeking to invalidate a state statute generally imposing a

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[7] "The United States, the Commonwealth, or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment of the tax imposed by this article." 72 P.S. §8102-C.2. The regulation at 61 Pa. Code § 91.192(a) repeats the statutory exemption.

sales tax for construction materials upon owners of construction projects, but, in the case of a federal project (in which the owner was exempt), shifting the legal incidence of the tax to the contractor. The government argued that such statutory scheme discriminated against federal contractors in violation of the federal supremacy clause, since contractors engaged in private construction projects were not directly subject to an equivalent tax.

In considering the government's claim of discriminatory treatment, the Court directed its focus to the economic burden of the tax upon the transaction between the federal government and its contractor, rather than upon the differentiation by the state in selecting the entity subjected to the legal incidence of the tax. *See Washington*, 460 U.S. at 545, 103 S. Ct. at 1349 (stating that "[t]he important consideration, therefore, is not whether the State differentiates in determining what entity shall bear the legal incidence of the tax, but whether the tax is discriminatory with regard to the economic burdens that result"). Thus, the Court's concern centered, not upon the fact that federal contractors bore legal responsibility to the state for a tax that other contractors did not bear directly, but rather, upon the economic impact of the tax upon transactions involving federal contractors vis-à-vis the impact upon transactions involving contractors engaged in private construction. *See id.* at 545-46, 103 S. Ct. at 1350 (stating that "[t]he State does not discriminate against the Federal Government and those with whom it deals unless it treats someone else better than it treats them"). The Court stated that where transactions are subject to an equivalent rate of taxation, but the state merely shifts the legal incidence of the tax in a nondiscriminatory manner, leaving the parties free to apportion the economic burden of the tax among themselves, there is no impermissible discrimination. *Id.*

App. 5a-6a (footnotes omitted).

Washington does not support the Court's decision. *Washington* permits shifting the incidence of a sales and use tax in a nondiscriminatory manner. A sales and use tax is a consumption tax, designed to burden the sale or use at retail of an item—generally tangible personal property—once and only once. Thus, a consumption tax is generally a one-time tax on a consumer expenditure.

Pennsylvania's Realty Transfer Tax is not a consumption tax. It is a transaction tax. It is imposed generally every time a parcel of real estate is transferred and generally on all the parties to the transfer. It is in the nature of a privilege tax: In Pennsylvania, if you engage in a transaction transferring real estate, generally you pay the tax.

Washington holds that the incidence of a consumption tax is not important, so long as the economic burden of the tax on the item is not changed. The holding is based on the assumption that the economic burden of a one-time consumption tax on an item will not be varied depending on who in the chain of distribution pays the tax. Since the burden apparently will not be varied, *Washington* holds that there is no discrimination. The holding does not apply to a transaction tax imposed on both parties to a transaction. There is nothing in the nature of a transaction tax, normally imposed on all parties, from which it is reasonable to conclude that a buyer expecting to pay a .5 % tax will be able to recoup from the exempt seller half of the 1% tax imposed exclusively on the buyer. If a parcel of real estate is sold three times in ten years, once in a transaction with the FDIC, what is there in the laws of economics that shows that the FDIC will bear its share of the taxes? If it can't be shown, then the private party dealing with the FDIC is bearing the FDIC's share of the taxes. Consequently, the private party's tax has been doubled solely because it dealt with the FDIC. It may be reasonable to assume that the burdens of a one-time consumption tax will be passed through to the ultimate consumer of tangible personal property, no matter who pays the tax. However, it is not reasonable to assert that the price of real estate sold in Pennsylvania in 1994 reflects every Pennsylvania Realty Transfer Tax imposed on all transfers of the real estate since 1952, when the tax was first adopted. Act of Dec. 27, 1951, P.L. 1742, No. 467 (repealed). If the assertion is not reasonable, then all

parties are paying the tax, not a single retail consumer, and therefore *Washington* has no application.

The Court's conclusion that Pennsylvania's Realty Transfer Tax "does not even go so far as to shift the burden among the parties (as was the case in *Washington*)" is simply incorrect. App. 7a (n.9). The absence of Petitioners' right of contribution against the FDIC clearly shifts the incidence of the *entire* tax to Petitioners, as the Pennsylvania Supreme Court itself concluded: "Taxpayers bore exclusive liability for the taxes; whereas, those involved in transactions among private parties share liability jointly and severally." App. 7a (n.10).

It is no answer to doubling the tax to say that a party doubly-taxed can negotiate with another party not taxed. Any party to a real estate transaction always has the ability to negotiate any item with the other party, whether or not the other party is exempt. There is no substance to saying that there is no discrimination in taxing buyer A at .5% while taxing buyer B at 1% because buyer B can negotiate. Both buyers can negotiate. Which position would a buyer prefer to negotiate from, the position of a .5% taxpayer or a 1% taxpayer? Suppose the statute taxed male buyers at .5% and females at 1%. Would anyone sit still for a minute for the argument that there is no discrimination because the female buyers can negotiate?

Washington Should Be Overruled

If *Washington* was properly relied upon by the Pennsylvania Supreme Court, it should be overruled to the extent that it justifies discriminatory state transfer tax treatment of a purchaser of real estate from a federal agency based upon the unrealistic assumption that a federal agency will voluntarily assume a transfer tax obligation that the agency has a constitutional right to avoid.

Here, Petitioners could allocate the economic burden of the transfer tax *only* if the FDIC agreed to pay half the transfer tax directly or agreed to reduce its price by that same amount of tax, thus bearing the burden indirectly. Either way, the "opportunity" for

Petitioners to allocate the economic burden of the transfer tax is worthless: it can only be realized if the FDIC pays for its immunity from direct state taxation by bearing the burden of the tax that it has a constitutional right to avoid. *See North Dakota v. United States*, 495 U.S. 423, 445 (1990) (Scalia, J., concurring in the judgment):

> As a matter of principle, if (as we recognized in *Washington*) the Federal Government has a constitutional entitlement to its immunity from direct state taxation, then it seems to me the state cannot require it to "pay" for that entitlement by bearing the burden of an indirect tax directed at it alone [referring to the Washington sales tax imposed only on federal contractors].

Justice Scalia concurred in the judgment in *North Dakota* only because the option available to the federal government to avoid the discriminatory state labeling requirement—buying liquor from in-state distributors—was "not a course of action that the Federal Government has a constitutional right to avoid." *Id.*, 495 U.S., at 447.

Justice Scalia ultimately agreed with the *North Dakota* plurality's conclusion that the labeling requirement was not unconstitutional because the option of avoiding the discriminatory state requirement involved "an option that no other retailer in the state enjoys" and thus left the federal government "better off" than other state retailers. *Id.*, 459 U.S., at 448. In *Washington*, the federal contractors were "better off" because their tax burden was less than the tax burden imposed on private contractors. *Washington*, 460 U.S., at 544-45. Thus, in both *North Dakota* and *Washington*, the options left both the federal government and those with whom it dealt "better off" than similarly situated private parties.

Washington holds that "[t]he State does not discriminate against the Federal Government and those with whom it deals unless it treats someone else better than it treats them." *Id.* Pennsylvania's real estate transfer scheme does just that. It treats nonexempt purchasers dealing with nonexempt sellers better than it treats nonexempt purchasers (here, Petitioners) dealing with exempt sellers (here, the

FDIC) because all purchasers must record their deeds to protect their titles and, as a condition of recording their deeds, only nonexempt purchasers are required to pay the *entire* transfer tax—which includes the portion that state law otherwise requires nonexempt sellers to pay.

Indeed, the *Washington* majority stated that "[t]he appropriate question is whether a contractor who is considering working for the Federal Government is faced with a cost he would not have to bear if he were to do the same work for a private party." *Washington,* 460 U.S., at 542. The majority answered its question with an assumption that the dissent found "highly suspect." *Id.,* 460 U.S., at 555 n.4 (Blackmun, J., dissenting). The majority assumed that the federal contractor in *Washington,* "depending on his bargaining power," could pass the discriminatory state tax on to the federal government. *Id.,* 460 U.S., at 542 n.4. The majority "assumed away" the discriminatory effect of the state tax:

> *If* the tax [rate] is the same, and [*if*] the parties have the same bargaining power, the amounts the purchasers pay and the amounts the contractors receive will be identical in the two cases [*i.e.,* where the private contractor *reduces* his price to the private purchaser, and the federal government assumes the federal contractor's *additional* tax burden].

Id.

As the dissent in *Washington* suspected, the majority's assumption of equal bargaining power was not correct there and is even more egregious here. *Id.,* 460 U.S., at 555 n.4. The sales agreements in these cases are FDIC-prepared form agreements that are identical in all material terms. App. 25a-32a; 33a-43a. These form agreements required the Petitioners as purchasers to bear nearly all closing costs, including the cost of "[a]ny . . . transfer taxes." App. 31a; 39a. Thus, Petitioners' "opportunity" to allocate these costs to the FDIC was, in reality, nonexistent. Requiring Petitioners to bear the entire tax satisfies even the *North Dakota* plurality's "traditional standard of 'burden'—that specified by Congress and, in its ab-

sence, *that which exceeds the burden imposed on other comparably situated citizens of the State." North Dakota,* 495 U.S., at 436 n.8 (emphasis added).

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,
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December 22, 1999

[J-258-99]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

WILSON PARTNERS, L.P., Appellant	:	48 M.D. Appeal Dkt. 1999
v.	:	Appeal from the Order of the Commonwealth Court entered on February 26, 1999 at Nos. 355 F.R. 1996
COMMONWEALTH OF PENNSYLVANIA, BOARD OF FINANCE AND REVENUE, Appellee	:	SUBMITTED: July 12,1999
ACADEMIC PROPERTIES, INC., Appellant	:	49 M.D. Appeal Dkt. 1999
v.	:	Appeal from the Order of the Commonwealth Court entered on February 26, 1999 at Nos. 356 F.R. 1996
COMMONWEALTH OF PENNSYLVANIA, BOARD OF FINANCE AND REVENUE, Appellee	:	SUBMITTED: July 12,1999

OPINION

MR. JUSTICE SAYLOR DECIDED: October 1, 1999

In these consolidated direct appeals, Appellants present constitutional challenges to the imposition of a tax at the one-percent rate established by the Pennsylvania Realty Transfer Tax Act within the context of a real estate transfer in which one party to the transaction is exempt.

Appendix

In late 1993, Appellants Wilson Partners, L.P. and Academic Properties, Inc. (collectively, "Taxpayers") entered into separate, unrelated agreements with the Federal Deposit Insurance Corporation, as receiver for a failed bank, for the purchase of various parcels of property located in Chester and Philadelphia Counties. In early 1994, pursuant to its agreement, Appellant Wilson Properties, L.P. ("Wilson") took title to the Chester County property and, in accordance with the Pennsylvania Realty Transfer Act,[1] paid realty transfer tax of $24,380.00 to the Department of Revenue. Such payment represented one percent of the purchase price and the entire tax imposed by the Commonwealth. In February of 1994, Appellant Academic Properties, Inc. took title to the Philadelphia-based properties and paid transfer taxes of $69,920.00, also representing one hundred percent of the state realty transfer taxes imposed.

Taxpayers subsequently filed petitions in the Department of Revenue seeking full or partial refunds on the ground that imposition of the taxes constituted a violation of their rights under the state and federal constitutions. Specifically, Taxpayers contended that the Act unconstitutionally imposed an unequal tax burden upon a nonexempt party entering into a taxable real estate transaction with an exempt party. According to Taxpayers, such inequality resulted from the fact that a nonexempt party must bear exclusive liability to the Commonwealth for the taxes, whereas parties transacting with other nonexempt parties share the liability to the Commonwealth jointly and severally (Taxpayers characterized this circumstance as "doubling" their liability). Taxpayers claimed that this asserted inequality constituted discrimination violative of the supremacy clause of the United States Constitution, U.S. Const. Art. VI, cl.2, as well as the uniformity clause of the Pennsylvania Constitution, Pa. Const. Art. VIII, §1, and the equal protection clause under the United States Constitution, U.S. Const. Amend. XIV. The Department of Revenue denied the petitions, and the Board of Finance and Revenue affirmed.

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[1] Act of March 4, 1971, P.L. 6, No. 2, §§1101-C-1113-C (codified as amended at 72 P.S. §§8101-C-81134-C) (the "Act").

Appendix

The Commonwealth Court affirmed in a published decision and entered judgment in favor of the Commonwealth. *Wilson Partners, L.P. v. Commonwealth,* 723 A.2d 1079 (Pa. Cmwlth. 1999). It opened its analysis by noting that the Act uniformly imposes a single tax upon all transfers, with liability for the full amount of the payment generally being shared jointly and severally among the parties to the transaction, and with the parties being free to discharge such liability in any agreed manner. Although the scheme imposes exclusive liability upon a party transacting with an exempt entity such as a governmental unit, the Commonwealth Court rejected Taxpayers' claim that this results in either disparate treatment or inappropriate classification. To the contrary, the Commonwealth Court concluded that parties who transact with the United States simply are "no worse off" than parties who transact with nonexempt parties. *Wilson Partners,* 723 A.2d at 1084. It drew this conclusion based upon the following logic:

> Contrary to the Taxpayers' contentions, the exempt status of one party to a real estate transfer transaction does not result in the other party paying twice the amount of tax otherwise owed by that party. As we stated above, both parties to a transaction are liable for the full amount of the transfer tax, and the classification of governmental parties as exempt does nothing to increase the liability of a nonexempt party. As a practical matter, in most taxable transfers the parties have apportioned the tax liability by agreement. Where the parties have not agreed to apportion the amount of the transfer tax, the liability inevitably falls upon the party that presents the instrument for recording; that party may then seek contribution from the other party.

Wilson Partners, 723 A.2d at 1083. The Commonwealth Court also concluded that any classification resulting under the Act rested upon a reasonable distinction between governmental and nongovernmental parties to real estate transfer transactions; thus, the Act

conformed to principles of uniformity and equal protection. This direct appeal followed.[2]

In the Act, the General Assembly has imposed a one-percent tax upon certain transfers of real property in the Commonwealth.[3] Liability to the Commonwealth is ordinarily shared jointly and severally among the parties to the transaction. 72 P.S. §8102-C; *see also* 61 Pa. Code §91.111. Where, however, the United States or the Commonwealth (or their instrumentalities, agencies or political subdivisions) are parties, they are exempt from the tax, 72 P.S. §8102-C.2; *see also* 61 Pa. Code §91.192.[4] In such instances, liability to the Commonwealth rests exclusively upon the nonexempt party or parties to the transaction, since the exempt status of one party does not relieve the other parties from liability for the full amount of the tax. 72 P.S. §8102-C.2; *see also* 61 Pa. Code §91.192(b). The liability of a nonexempt party may be discharged by the parties as they may agree; however, such contractual apportionment is without prejudice to the right of the Commonwealth to enforce the obligations of the nonexempt parties. *See* 61 Pa. Code §91.192(b).

In this appeal, Taxpayers maintain that the Act discriminates against parties dealing with the federal government in violation of the

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[2] Pursuant to Section 723(b) of the Judicial Code, 42 Pa.C.S. §723(b), final orders of the Commonwealth Court disposing of appeals from the Board of Finance and Revenue are appealable as of right to this court. *See also* Pa.R.A.P. 1101(a)(2).

[3] Specifically, the Act provides that:

> [e]very person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect of the transaction or any part thereof, . . . a State tax at the rate of one percent of the value of the real estate represented by such document, which State tax shall be payable at the earlier of the time the document is presented for recording or within thirty days of acceptance of such document. . . .

72 P.S. §8102-C; *see also* 61 Pa. Code. §91.111(b). Transactions that are excluded from the tax are identified in Section 8102-C.3, *see also* 61 Pa. Code §91.193; however, the issues in this case center upon the consequences of exempting individual parties from the tax, rather than upon the transactional exclusions.

[4] This exemption is consonant with the federal government's immunity from state taxation. *See generally McCullough v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

federal supremacy clause, as well as that the asserted unequal burden imposed by the Act results in a violation of principles of uniformity and equal protection under the Pennsylvania and United States Constitutions.

With regard to the claim of impermissible discrimination, the reasoning employed by the United States Supreme Court in *Washington v. United States,* 460 U.S. 536, 103 S. Ct. 1344 (1983), is of relevance. In *Washington,* the United States brought an action seeking to invalidate a state statute generally imposing a sales tax for construction materials upon owners of construction projects, but, in the case of a federal project (in which the owner was exempt), shifting the legal incidence of the tax to the contractor. The government argued that such statutory scheme discriminated against federal contractors in violation of the federal supremacy clause,[5] since contractors engaged in private construction projects were not directly subject to an equivalent tax.

In considering the government's claim of discriminatory treatment, the Court directed its focus to the economic burden of the tax upon the transaction between the federal government and its contractor, rather than upon the differentiation by the state in selecting the entity subjected to the legal incidence of the tax. *See Washington,* 460 U.S. at 545, 103 S. Ct. at 1349 (stating that "[t]he important consideration, therefore, is not whether the State differentiates in determining what entity shall bear the legal incidence of the tax, but whether the tax is discriminatory with regard to the economic burdens that result"). Thus, the Court's concern centered, not upon the fact that federal contractors bore legal responsibility to the state for a tax that other contractors did not bear directly, but rather, upon the economic impact of the tax upon transactions involving federal contractors vis-à-vis the impact upon transactions involving contractors engaged in private construction. *See id.* at 545-46, 103 S.

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[5] The supremacy clause requires that "[t]he Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI, cl.2.

Ct. at 1350 (stating that "[t]he State does not discriminate against the Federal Government and those with whom it deals unless it treats someone else better than it treats them"). The Court stated that where transactions are subject to an equivalent rate of taxation, but the state merely shifts the legal incidence of the tax in a non-discriminatory manner, leaving the parties free to apportion the economic burden of the tax among themselves, there is no impermissible discrimination. *Id.*[6]

Applying the principles to circumstances before it, the *Washington* Court found that, although the Washington sales tax scheme shifted the legal incidence of the tax from project owner to contractor in circumstances where the property owner was exempt, the scheme was not discriminatory. According to the Court, since the taxing statute imposed an equivalent rate of taxation upon all sales of construction materials and did not deprive the parties of the opportunity to apportion among themselves the economic burden of the tax, it thus required federal contractors to bear no greater tax burden than was shouldered by private buyers of construction work or which could be passed on by them to their contractors. *Id.* at 545, 103 S. Ct. at 1349.[7] *See generally State Dep't of Fisheries v.*

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[6] The Supreme Court emphasized that there is no requirement of proof that the burdened private party actually negotiated an apportionment of the tax or that it necessarily would do so; rather, "the *opportunity* for the parties to allocate the economic burden of the tax among themselves [is] sufficient." *Washington*, 460 U.S. at 545, 103 S. Ct. at 1349 (emphasis in original); *see also id.* at 542 n.4, 103 S. Ct. at 1348 n.4 ("it makes no difference to the contractor (or to the purchasers) which of them is required to pay the tax to the State, as long as they have the opportunity to allocate the burden among themselves by adjusting the price").

[7] We recognize that the *Washington* decision arose in the context of a claim by the federal government that the Washington system of revenue collection circumvented its tax immunity. Nevertheless, *Washington's* reasoning is pertinent to this case, in part because Taxpayers invoke the FDIC's tax immunity as a basis for relief in their favor. In this regard, it is significant that the Court has held that non-discriminatory efforts by states to tax the federal government indirectly may be justified. *See Washington*, 460 U.S. at 547, 103 S. Ct. at 1350; *see generally Minneapolis Star and Tribune v. Minnesota Commissioner of Revenue*, 460 U.S. 575, 590, 103 S. Ct. 1365, 1374 (1983) (stating that "[i]n spite of the rule against direct taxation of the Federal Government, States remain free to impose the *economic* incidence of a tax on the Federal Government, as long as that tax is not discriminatory[;] [i]n that situation, then, the valid state interest in requiring federal enterprises to bear their share of the

DeWatto Fish Co., 674 P.2d 659, 662 (Wash. 1983) (stating, by analogy to *Washington* in the context of a commerce clause challenge, that "the identity of the party bearing the legal incidence of the tax shifted to reflect the fact that certain parties were not subject to state taxation is of no practical or constitutional significance since the total tax rate remained equal and the parties had the opportunity to allocate the burden among themselves").

In the present case, like the situation in *Washington*, the realty transfer taxes imposed upon Taxpayers' transactions with the FDIC are also an integral part of a uniform system of revenue collection that applies equally to all non-excluded transactions within the Commonwealth,[8] regardless of the identity of the parties. In all cases, the transaction implicates a one-percent levy. The Act does not direct how the economic burden of the tax must be apportioned among the parties, and, indeed, pursuant to Department of Revenue regulations, such determination is expressly left to the parties. The complained-of provisions of the Act merely remove liability from the federal government, as must be done to accommodate its immunity from taxation.[9] Since, under *Washington*, the economic impact of the tax in such circumstances is deemed uniform, there is no cognizable discrimination.[10]

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tax burden will often justify the use of differential methods of taxation" (emhasis in original; citations omitted)). More fundamentally, *Washington* is directly relevant here because the federal government's arguments in that case were premised upon its claim that the Washington taxing scheme treated federal contractors in a discriminatory manner, and the Court expressly rejected such contention.

[8] As previously noted, Petitioners make no claim regarding the validity of the enumerated exclusions for transactions. *See supra* note 3.

[9] Accordingly, the Act does not even go so far as to shift the burden among the parties (as was the case in *Washington*). Rather, pursuant to the Act, Taxpayers would in any event have borne the legal incidence of the tax, albeit jointly and severally with the sellers, had the transactions been among private parties.

[10] We acknowledge that, viewing the transaction from Taxpayers' perspective, there is a degree of differential treatment, since Taxpayers bore exclusive liability for the taxes; whereas, those involved in transactions among private parties share liability jointly and severally. Thus, the Commonwealth Court's statement that Taxpayers are "no worse off" is correct only when viewed through the framework of *Washington*, which requires that the transaction be viewed from a wider perspective and holds that the complained-of differences lack constitutional significance.

In addition to the challenge under the supremacy clause, Taxpayers also raise claims under the uniformity and equal protection clauses of the Pennsylvania and United States Constitutions.[11] It is well established that, in matters of taxation, the General Assembly possesses wide discretion, and a tax enactment will not be invalidated unless it "'*clearly, palpably,* and *plainly* violates the Constitution.'" *Leonard,* 507 Pa. at 320-21, 489 A.2d at 1351 (quoting *Commonwealth v. Life Assurance Co. of Pa.,* 419 Pa. 370, 377, 214 A.2d 209, 214 (1965), *appeal dismissed,* 384 U.S. 268, 86 S. Ct. 1476 (1966)) (emphasis in original). When challenging a taxing statute, it is the taxpayer's burden to demonstrate, not only that the enactment results in some form of classification, but also that such classification is unreasonable, in that it is not rationally related to any legitimate state purpose. *Leonard,* 507 Pa. at 321, 489 A.2d at 1352. Neither the equal protection clause nor the uniformity clause requires absolute equality and perfect uniformity in taxation, and any doubts as to the constitutionality of the statute are to be resolved in favor of upholding the statute. *Id.* at 321, 489 A.2d at 1325. *See generally Lee Hosp. v. Cambria County Bd. of Assessment Appeals,* 162 Pa. Cmwlth. 38, 52, 638 A.2d 344, 351, *appeal discontinued,* 538 Pa. 661, 648 A.2d 791 (1994).

Although *Washington* dealt with a supremacy clause challenge, we find its reasoning persuasive in the uniformity of taxation and equal protection contexts as well. While parties dealing with the federal government encounter a degree of differential treatment in terms of the legal incidence of taxation under the Act, this difference is without constitutional import, since the economic burden which they bear is deemed to be equivalent. *See generally DeWatto,* 674 P.2d

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[11] The uniformity clause of the Pennsylvania Constitution provides that "[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under the general laws." Pa. Const. Art. VIII, §1. To be uniform, a tax must "operate alike on the classes of things or property subject to it." *Commonwealth v. Overholt & Co.,* 331 Pa. 182, 191, 200 A. 849, 853 (Pa. 1938). The analysis under the uniformity clause of Pennsylvania's Constitution is generally the same as that under the equal protection clause of the United States Constitution. *Leonard v. Thornburgh,* 507 Pa. 317, 320, 489 A.2d 1349, 1351 (1985).

at 659 (stating that "[t]here is ample support for the common-sense view that merely shifting the legal incidence of a tax from a nontaxable to a taxable party is not discriminatory"). We also adopt the Commonwealth Court's conclusion that the taxing scheme under the Act is grounded in a rational basis, as it functions in a non-discriminatory manner to ensure that equal revenues will be collected for all non-excluded transfers of real estate occurring within the Commonwealth. *See generally Commonwealth v. Life Assurance Co. of Pa.*, 419 Pa. 370, 377, 214 A.2d 209, 214 (1965) (stating that "[s]o long as the classification imposed is based upon some standard capable of reasonable comprehension, be that standard based upon ability to produce revenue or some other legitimate distinction, equal protection of the law has been afforded").

The judgment of the Commonwealth Court is affirmed.

JUDGMENT ENTERED:
October 1, 1999
/s/Shirley Bailey, Chief Clerk

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

WILSON PARTNERS, L.P., Petitioner	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA, Respondent	:	No. 355 F.R. 1996
ACADEMIC PROPERTIES, INC., Petitioner	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA, Respondent	:	No. 356 F.R. 1996
	:	Argued: December 9, 1998

BEFORE: HONORABLE JAMES GARDNER COLINS, President Judge
HONORABLE JOSEPH T. DOYLE, Judge
HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE DORIS A. SMITH, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE JAMES R. KELLEY, Judge
HONORABLE JIM FLAHERTY, Judge

OPINION BY PRESIDENT JUDGE COLINS FILED: January 26, 1999

Wilson Partners and Academic Properties (collectively, Taxpayers) petition for review of the Board of Finance and Revenue orders denying their petitions for refund of realty transfer tax.

In separate, unrelated transactions, the Taxpayers entered into sale and purchase agreements with the Federal Deposition Insurance Corporation (FDIC), and the FDIC subsequently conveyed

certain properties to the Taxpayers pursuant to those agreements. At the time of the transactions, the FDIC was receiver of Meritor Savings Bank. Wilson Partners executed a sales agreement with the FDIC for real estate located in Chester County, Pennsylvania;[1] the deed conveying the property was executed and recorded in January 1994. Academic Properties executed a sales agreement with the FDIC for real estate located in the city of Philadelphia;[2] the deeds conveying the property were executed and recorded in February 1994. At the time the deeds were recorded, the Taxpayers paid the Pennsylvania realty transfer tax. Both Taxpayers subsequently petitioned for refund of at least half of the amount of the tax paid, and in the alternative, for refund of the entire amount on the ground that imposition of the tax constituted a violation of their rights under the state and federal constitutions. The Department of Revenue denied the refunds, and the Board of Finance and Revenue affirmed.

On appeal,[3] the Taxpayers argue that the Pennsylvania realty transfer tax act (Act)[4] unconstitutionally imposes an unequal tax burden on a nonexempt party who enters into a taxable real estate transaction with an exempt party, and discriminates against the federal government in violation of the Supremacy Clause of the U.S. Constitution by requiring a nonexempt party to a transaction with the federal government to pay the tax at twice the rate applicable to a transaction with nongovernment party.

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[1] The property is located at 601 Lee Road, Tredyffrin Township.

[2] The property consisted of four parcels located at 3001-23, 3025-53, 3101-57 (rear), and 3101-57 Market Street. The sales agreement was executed by the FDIC and Bert Landau, who immediately assigned his interests in the agreement to Academic Properties.

[3] The Court hears determinations of the Board of Finance and Revenue in its appellate jurisdiction, but its review is de novo. *Sabatine v. Commonwealth*, 497 Pa. 453, 442 A.2d 210 (1981).

[4] Sections 1101-C to 1113-C of the Tax Reform Code of 1971, Act of March 4, 1971, P.L. 6, *as amended*, added by the Act of May 5, 1981, P.L. 36, *as amended*, 72 P.S. §§8101-C - 8113-C. The Act of May 5, 1981 repealed the predecessor realty transfer tax act, which was reported at 72 P.S. §§3283-3292. The imposition of the tax in the current act remains essentially the same as under the predecessor act.

The Act provides that

> [e]very person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, ... a State tax at the rate of one percent of the value of the real estate represented by such document which State tax shall be payable at the earlier of the time the document is presented for recording or within thirty days of acceptance of such document....

Section 1102-C of the Act 72, P.S. §8102-C. Section 1102-C.2 of the Act exempts from payment of the tax, the United States, the Commonwealth, and their instrumentalities, agencies, and political subdivisions. 72 P.S. §8102-C-2.[5] Section 1102-C.3 excludes from imposition of the tax certain transfers, such as transactions involving no consideration, transactions between family members, and transactions involving condemned and tax-delinquent property. 72 P.S. §8102-C.3.[6]

The realty transfer tax is a tax upon the transaction, the transfer of title to real estate as evidenced by a document that is to be recorded.[7] *Sablosky v. Messner,* 372 Pa. 47, 92 A.2d 411 (1952); *Commonwealth v. Willson Products, Inc.*, 412 Pa. 78, 194 A.2d 162 (1963); *Comach Construction, Inc. v. City of Allentown,* 633 A.2d 1336 (Pa. Cmwlth. 1993), *petition for allowance of appeal denied,* 539 Pa. 682, 652 A.2d 1327 (1994). The Act does not require that buyer and seller each pay half of the tax due. The Act imposes a single tax on the transaction with liability for the full amount of the payment on both parties; the parties' responsibility for

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[5] Added by Section 11 of the Act of July 2, 1986, P.L. 318.

[6] Added by Section 11 of the Act of July 2, 1986, P.L. 318, *as amended.*

[7] "Document" as it is used in the Act, refers to "[a]ny deed, instrument or writing which conveys, transfers, devises, vests, confirms or evidences any transfer or devise of title to real estate...." Section 1101-C of the Act, 72 P.S. §8101-C.

the tax may be discharged as they agree. *Sablosky.* Liability for payment of the tax is joint and several, except when one of the parties is an exempt party.[8] The excluded status of one party does not relieve the other parties from liability for the full amount of the tax. 61 Pa. Code §91.192(b).

The Taxpayers argue that because they transacted with an exempt party, the taxing scheme unfairly imposes liability for the entire one-percent tax due, whereas in transactions between nonexempt parties, the parties share the tax liability. The Taxpayers suggest that the Act creates two classes of taxpayers—exempt and nonexempt parties to a taxable transaction—without a reasonable and legitimate distinction and that it imposes substantially unequal tax burdens on similarly situated parties in violation of the Fourteenth Amendment's Equal Protection Clause and the Uniformity Clause of the Pennsylvania Constitution.

The Uniformity Clause of the Pennsylvania constitution provides that "[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."[9] In matters of taxation, allegations of violations of the Equal Protection Clause and the Uniformity Clause are analyzed in the same manner. *Leonard v. Thornburgh,* 507 Pa. 317, 489 A.2d 1349 (1985). In matters of taxation, the legislature possesses wide discretion, and the burden is on the taxpayer to demonstrate that a classification made for purposes of taxation is unreasonable. *Id.*

Classification for tax purposes is valid when it is based upon some legitimate distinction between the classes that provides a reasonable basis for the difference in treatment. *Tool Sales Service Co., Inc. v. Commonwealth,* 536 Pa. 10, 637 A.2d 607 (1993), *cert. denied sub nom Tom Mistick & Sons, Inc. v. Pennsylvania,* 513 U.S. 822 (1994). When no legitimate distinction distinguishes

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[8] 61 Pa. Code §§91.111 and 91.191. "Each party to a document is jointly and severally liable for the tax imposed by this chapter, unless the party is an [exempt] party or the document evidences an excludable transaction." 61 Pa. Code §91.191.

[9] Pa. Const. art. VIII, §1.

the classes and the taxing scheme imposes substantially unequal tax burdens on persons otherwise similarly situated, the tax is unconstitutional. *Id.*

In this case, the realty transfer tax is imposed on all transactions that result in a real transfer, for consideration, of a beneficial interest in real estate. *Sablosky.* The transfer tax is an excise tax, imposed on the right to exercise the privilege of transferring beneficial ownership of property, and its payment is made a condition precedent to the recording of the instrument of transfer. As stated by the Supreme Court in *Sablosky,* both parties to the transaction are legally liable for the full amount of the tax.

The only classification of taxpayers created in the taxing statute distinguishes exempt and nonexempt parties. By exempting the United States, the Commonwealth, and their instrumentalities, agencies, and political subdivisions, the Act in effect distinguishes governmental taxpayers. This classification rests on the reasonable distinction between governmental and nongovernmental parties to real estate transfer transactions. As a matter of public policy, a state may exempt itself and its agencies, instrumentalities, and political subdivisions. Were it not for the exemption in the case of the realty transfer tax, the state government would in effect be taxing itself and its subdivisions and instrumentalities for a privilege it confers.

In the case of the United States government, the exemption notwithstanding, the state could not collect the transfer tax. In the absence of an express waiver, the United States and its agencies and instrumentalities have sovereign immunity from state taxation that places a direct and substantial burden on the government or on its exercise of its functions.[10] Furthermore, under substantially similar versions of the taxing statute, federal courts have ruled that the Commonwealth may not collect the realty transfer tax from the United States.[11]

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[10] *See eg., McCulloch v. Maryland,* 17 U.S. 316 (4 Wheat.) (1819) (voiding state tax on the Bank of the United States, an instrumentality of the United States); *Kern-Limerick, Inc. v. Scurlock,* 347 U.S. 110 (1954) (invalidating direct sales tax on U.S. government under the doctrine of sovereign immunity in the absence of clear congressional mandate waiving immunity).

[11] In *United States v. Knapp,* 168 F. Supp. 386 (M.D. Pa. 1959), the Crawford County recorder of deeds refused to record a deed without payment of the tax by the

Contrary to the Taxpayers' contentions, the exempt status of one party to a real estate transfer transaction does not result in the other party paying twice the amount of tax otherwise owed by that party. As we stated above, both parties to a transaction are liable for the full amount of the transfer tax, and the classification of governmental parties as exempt does nothing to increase the liability of a nonexempt party. As a practical matter, in most taxable transfers the parties have apportioned the tax liability by agreement. Where the parties have not agreed to apportion the amount of the transfer tax, the liability inevitably falls upon the party that presents the instrument for recording; that party may then seek contribution from the other party.

Next we address the Taxpayers' argument that the taxing scheme discriminates against the federal government by requiring a nonexempt party to a transaction with the federal government to pay the transfer tax at twice the rate applicable to a transaction with nongovernment party. A state law is unconstitutional under the Supremacy Clause only if it regulates or burdens the United States directly or discriminates against the federal government or those with whom it deals. *North Dakota v. United States*, 495 U.S. 423, 434 (1990). "The nondiscrimination rule finds its reason in the principle that the States may not directly obstruct the activities of the Federal Government." *Id.* at 437-38. Since a regulation imposed on those who deal with the government has as much potential to obstruct governmental functions as a regulation imposed on the government

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United States. The transaction involved an involuntary transfer from the property owner-mortgagor to Farmers' Home Administration, an agency of the U.S. government. Citing *Kern-Limerick*, the court concluded that the state could not tax the United States. Subsequent attempts to impose the tax on the United States met with the same result. After *Knapp*, the taxing statute was amended to mandate that the tax be paid out of the proceeds of any judicial sale before payment of any other claims. In *United States v. Dougherty*, 199 F. Supp. 48 (M.D. Pa. 1961), *affirmed*, 311 F.2d 627 (3rd Cir. 1962), another case involving a transfer to the Farmers' Home Administration, the court concluded even with amendment, "the result is the same,—the United States is being taxed and that cannot be." 199 F. Supp. at 50. The *Dougherty* court refused to permit payment of the tax out of the sale proceeds, thereby excluding the transaction rather than exempting one of the parties; however, both cases involved involuntary transfers of property to the FHA.

itself, to sustain constitutional challenge the regulation must be imposed equally on other similarly situated constituents of the state. *Id.* at 438. A "[s]tate does not discriminate against the federal government and those with whom it deals unless it treats someone else better than it treats them. *Id.* (quoting *Washington v. United States,* 460 U.S. 536, 544-45 (1983)). In the instant case, parties who transact with the United States are no worse off than nonexempt parties who transact with other nonexempt parties. Furthermore, we have already rejected the Taxpayers' contention that the taxing scheme imposes twice the normal tax liability on a nonexempt party in a transaction with the federal government.

For the reasons stated above, we affirm the decision of the Board of Finance and Revenue and enter judgment in favor of the Commonwealth.

/s/JAMES GARDNER COLINS, President Judge

/s/JAMES GARDNER COLINS, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

WILSON PARTNERS, L.P., Petitioner	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA, Respondent	:	No. 355 F.R. 1996
ACADEMIC PROPERTIES, INC., Petitioner	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA, Respondent	:	No. 356 F.R. 1996

ORDER

AND NOW, this 26th day of January, 1999, judgment in the above-captioned matter is entered in favor of the Commonwealth. Judgment becomes final unless exceptions are filed within (30) days of the entry of this order pursuant to Pa. R.A.P. 1571(i).

/s/JAMES GARDNER COLINS, President Judge

CERTIFIED FROM THE RECORD
AND ORDER EXIT
JAN 26 1999
/s/C.R . Hostutler
Deputy Prothonotary—Chief Clerk

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

WILSON PARTNERS, L.P.,	:	
Petitioner	:	
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
Respondent	:	No. 355 F.R. 1996
	:	
ACADEMIC PROPERTIES, INC.	:	
Petitioner	:	
	:	
v.		
COMMONWEALTH OF PENNSYLVANIA,	:	
Respondent	:	No. 356 F.R. 1996

ORDER

NOW, February 25, 1999, upon consideration of the parties' stipulation of consent to entry of final judgment without further proceedings on exceptions, the stipulation is approved, and the exceptions are overruled.

Judgment is hereby entered in favor of the Commonwealth of Pennsylvania.

/s/Dan Pellegrini, J.

CERTIFIED FROM THE RECORD
AND ORDER EXIT
FEB 26 1999
/s/C.R. Hostutler
Deputy Prothonotary—Chief Clerk

Appendix

CONSTITUTIONAL PROVISIONS

U.S. Const. art. VI, cl.2.

Clause 2. Supreme Law of Land

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. XIV, §1, cl.4.

Section 1. Equal Protection of the Laws

* * * nor deny to any person within its jurisdiction the equal protection of the laws.

PENNSYLVANIA REALTY TRANSFER ACT PROVISIONS
72 P.S. Article XI-C.

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§8102-C. Imposition of tax

Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, or for or in respect of the vellum parchment or paper upon which such document is written or printed, a State tax at the rate of one per cent of the value of the real estate represented by such document, which State tax shall be payable at the earlier of the time the document is presented for recording or within thirty days of acceptance of such document or within thirty days of becoming an acquired company.

* * *

§8102-C.2. Exempt parties

The United States, the Commonwealth or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment of the tax imposed by this article. The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax.

* * *

§8105-C. Documentary stamps

(a) The payment of the tax imposed by this article shall be evidenced by the affixing of a documentary stamp or stamps to every document by the person making, executing, delivering or presenting for recording such document. Such stamps shall be affixed in such manner that their removal will require the continued application of steam or water, and the person using or affixing such stamps shall write or stamp or cause to be written or stamped thereon the initials of his name and the date upon which such stamps are affixed or used so that such stamps may not again be used: Provided, That the department may prescribe such other method of cancellation as it may deem expedient.

(b) The use of documentary license meter impressions or similar indicia of payment in lieu of stamps as required by this article may be permitted in the discretion of the department.

* * *

§8108-C. Failure to affix stamps

No document upon which tax is imposed by this article shall at any time be made the basis of any action or other legal proceeding, nor shall proof thereof be offered or received in evidence in any court of this Commonwealth, or recorded in the office of any recorder of deeds of any county of this Commonwealth, unless a documentary stamp or stamps as provided in this article have been affixed thereto.

* * *

§8110-C. Unlawful acts; penalty

(a) It shall be unlawful for any person to:

(1) accept or present for recording or cause to be accepted or presented for recording any document, without the full amount of tax thereon being duly paid; or,

(2) make use of any documentary stamp to denote payment of any tax imposed by this article without cancelling such stamp as required by this article or as prescribed by the department; or,

(3) fail, neglect or refuse to comply with or violate the rules and regulations prescribed, adopted and promulgated by the department under the provisions of this article.

(b) any person violating any of the provisions of subsection (a) shall be guilty of a summary offense.

* * *

§8113-C. Refunds

(a) Whenever the amount due upon determination, redetermination or review is less than the amount paid to the department on account thereof, the department shall enter a credit in the amount of such difference to the account of the person who paid the tax.

(b) Where there has been no determination of unpaid tax, the department shall have the power, and its duty shall be, to hear and decide any application for refund and, upon the allowance of such application, to enter a credit in the amount of the overpayment to the account of the person who paid the tax. Such application must be filed under section 3003.1. [footnote omitted]

Appendix

PENNSYLVANIA REALTY TRANSFER TAX
REGULATORY PROVISIONS
61 Pa. Code Chapter 91.

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§ 91.111. Imposition of tax on documents.

(a) Except as provided in Subchapter I (relating to excluded parties and transactions), the person who delivers a document for acceptance or recording or on whose behalf a document is delivered for acceptance or recording and the person who accepts or presents for recording the document or on whose behalf the document is accepted or presented for recording are subject to pay a State tax at the rate of 1% of the value of the realty conveyed, transferred, demised or released by the grantor under the document.

(b) Except as provided in Subchapter I, it is the joint and several legal duty of the parties to the transaction to pay the proper tax due. This duty may be discharged by the parties as they agree but without prejudice to the rights of the Commonwealth against the parties.

* * *

§ 91.191. General applicability of tax.

Each party to a document is jointly and severally liable for the tax imposed by this chapter, unless the party is an excluded party or the document evidences an excludable transaction.

* * *

§ 91.192. Excluded parties.

(a) The Commonwealth and its governmental subdivisions, instrumentalities, agencies and other subordinate governmental bodies and the United States and its instrumentalities, agencies and other subordinate bodies are excluded from payment of the tax imposed by this chapter.

(b) The excluded status of a party does not relieve the other parties to a transaction from the entire tax due. The tax liability of a nonexempt party to a transaction may be discharged by the other parties as they agree but without prejudice to the rights of the Commonwealth against nonexcluded parties to the transaction.

Appendix

PENNSYLVANIA DEED RECORDING STATUTES, 21 P.S. §§351, 444

Necessity of Recording and Compulsory Recording

§351. Failure to record conveyance.

All deeds, conveyances, contracts, and other instruments of writing wherein it shall be the intention of the parties executing the same to grant, bargain, sell, and convey any lands, tenements, or hereditaments situate in this Commonwealth, upon being acknowledged by the parties executing the same or proved in the manner provided by the laws of this Commonwealth, shall be recorded in the office for the recording of deeds in the county where such lands, tenements, and hereditaments are situate. Every such deed, conveyance, contract, or other instrument of writing which shall not be acknowledged or proved and recorded, as aforesaid, shall be adjudged fraudulent and void as to any subsequent bona fide purchaser or mortgagee or holder of any judgment, duly entered in the prothonotary's office of the county in which the lands, tenements, or hereditaments are situate, without actual or constructive notice unless such deed, conveyance, contract, or instrument of writing shall be recorded, as aforesaid, before the recording of the deed or conveyance or the entry of the judgment under which such subsequent purchaser, mortgagee, or judgment creditor shall claim. Nothing contained in this act shall be construed to repeal or modify any law providing for the lien of purchase money mortgages.

§444. All deeds made in the state to be acknowledged and recorded within ninety days

All deeds and conveyances, which, from and after the passage of this act, shall be made and executed within this commonwealth of or concerning any lands, tenements or hereditaments in this commonwealth, or whereby the title to the same may be in any way affected in law or equity, shall be acknowledged by the grantor, or grantors, bargainor or bargainors, or proved by one or more of the subscribing witnesses thereto, before one of the judges of the su-

preme court, or before one of the judges of the court of common pleas, or recorder of deeds, prothonotary, or clerk of any court of record, justice of the peace, or notary public of the county wherein said conveyed lands lie, and shall be recorded in the office for the recording of deeds where such lands, tenements or hereditaments are lying and being, within ninety days after the execution of such deeds or conveyance, and every such deed and conveyance that shall at any time after the passage of this act be made and executed in this commonwealth, and which shall not be proved and recorded as aforesaid, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for a valid consideration, or any creditor of the grantor or bargainor in said deed of conveyance, and all deeds or conveyances that may have been made and executed prior to the passage of this act, having been duly proved and acknowledged as now directed by law, which shall not be recorded in the office for recording of deeds in the county where said lands and tenements and hereditaments are lying and being, within ninety days after the date of the passage of this act, shall be adjudged fraudulent and void as to any subsequent purchaser for a valid consideration, or mortgagee, or creditor of the grantor, or bargainor therein.

FDIC NATIONAL AUCTION 1993
(Property: 3 Lee Rd, Malvern, PA)
(Index #581)

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(CASH/FINANCED SALE—AUCTION)

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Exhibit "L"— Purchaser Eligibility Certification
Exhibit "M"— Assignment of Purchase and Sale Agreement

(IF A SELLER-FINANCED TRANSACTION, IN ADDITION TO THE ABOVE, THE FOLLOWING EXHIBITS ARE ALSO APPLICABLE)

Exhibit "N"— Note
Exhibit "O"— Mortgage
Exhibit "P"— Borrower's Loan Affidavit (Individual)
Exhibit "Q"— Borrower's Loan Affidavit (Corporation/Partnership)
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Exhibit "V"— Assignment of Leases and Cash Collateral

(IF AN ANNOUNCEMENT IS MADE AT AUCTION WITH RESPECT TO THE PROPERTY, THE FOLLOWING EXHIBIT IS ALSO APPLICABLE.)

Exhibit "W"—Auction Day Announcement

Appendix

PURCHASE AND SALE AGREEMENT
(CASH/FINANCED SALE—AUCTION)

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into between Federal Deposit Insurance Corporation as Receiver of Meritor Savings Bank ("Seller") and Wilson Partners LP a Delaware Limited Partnership ("Purchaser").

WITNESSETH:

In consideration of the mutual covenants and agreements set forth herein, the parties hereto hereby agree as follows:

PART I

Part II of this Agreement, including the Exhibits, makes reference to the following items that must be completed or noted as "Not Applicable" prior to execution of this Agreement:

1. The real property is located at 3 Lee Road, Malvern, Pennsylvania and is more fully described in Exhibit "A" and Section 1 of Part II.

2. The "Purchase Price" is Two million six hundred fifty thousand dollars no cents ($2,650,000.00).

(A) This Agreement is (check only one):

x cash sale

__ seller-financed sale.

(B) In the case of a Seller-financed transaction, Purchaser has elected to obtain a loan for (check only one):

__ Sixty-five percent (65%)

__ Seventy-five percent (75%)

of the Purchase Price. Accordingly, the Purchase Price consists of the following:

(1) "Cash Portion of the purchase price" in the amount of ~~Two hundred sixty five thousand dollars ($265,000.00)~~, which includes the Initial Deposit and Earnest Money, subject to Section 2 of Part II; and

(2) "Seller Financing Portion" in the amount of _____ ($ -0-).

SELLER'S INITIALS /s/(illegible)

PURCHASER'S INITIALS /s/JWH, VP

3. The "Initial Deposit" is Fifty Thousand Dollars ($50,000.00), payable in accordance with the provisions of Section 2 of Part II.

4. The "Earnest Money" is an amount equal to Two hundred sixty-five thousand dollars ($265,000.00) which is the greater of Fifty Thousand Dollars ($50,000.00) or

(A) If a cash sale, ten percent (10%); and

(B) If a Seller-financed sale, twenty percent (20%)

of the Purchase Price. Such Earnest Money shall be payable in accordance with the provisions of Section 2 of Part II.

5. The "Broker" is Cushman & Wakefield, Inc. and its affiliates.

6. The "Title Company", which issued the Title Commitment dated July 31, 1993, is First American Title Insurance Company.

7. The "Effective Date" is the date upon which this Agreement is executed by Seller, as evidenced by the insertion of such date below Seller's signature.

8. The "Closing Date" shall be no later than the first business day following the expiration of:

(A) If a cash sale, thirty (30) days from the Effective Date; or

(B) If a Seller-financed sale, ten (10) business days from the date Seller notifies Purchaser of the approval of its Loan Application [as defined in Subsection 3 (A) of Part II], unless otherwise agreed to by the parties.

9. For purposes of notice, as provided in Section 8 of Part II, the addresses of the parties shall be as follows:

If to Seller, to:	Federal Deposit Insurance Corporation as Receiver of Meritor Savings Bank c/o Janet Lengel One Research Drive Westborough, MA 01581
Telephone No.:	(508) 389-5346
Fax No.:	(508) 389-5191

SELLER'S INITIALS /s/(illegible)

PURCHASER'S INITIALS /s/JWH, VP

With copy to:	Federal Deposit Insurance Corporation c/o Frank S. Kressman—Legal Division One Research Drive Westborough, MA 01581
If to Purchaser, to:	Wilson Partners, L.P. 1325 Morris Drive, Suite 201 Wayne, Pennsylvania 19087-5594
Attention:	James W. Hovey, V. President
Telephone No.:	(215) 640-1400
Fax No.:	(215) 640-5861
With copy to:	_____ _____ _____

IF THIS TRANSACTION IS A SELLER-FINANCED TRANSACTION, THE FOLLOWING SECTIONS 10, 11 AND 12 WILL APPLY. IN ADDITION, IN PART II OF THIS AGREEMENT, THE FOLLOWING SECTIONS WILL ALSO BE APPLICABLE:

—2 (A)
—2 (B)
—3
—4
—5 (D)
—6 (A)(11)
—6 (A)(12)
—7(B)(2)(b)
—7(B)(2)(c)
—7(B)(2)(d)
—8
—9
—10
—11

10. The "Loan Application Fee" is Five Thousand Eighty ($5,080.00) Dollars and No/100, is non-refundable, and is payable in accordance with the provisions of Section 3 (A) of Part II.

(E) Upon completion of the Closing, Seller shall deliver to Purchaser possession of the Property free and clear of all tenancies and contracts of every kind and parties in possession, except for tenants or parties in possession listed on the Rent Roll Affidavit, except for Permitted Exceptions and except for the Service Contracts, with the Property in the same condition as of the date hereof, normal wear and tear excepted. Purchaser hereby agrees to defend (with counsel acceptable to Seller), indemnify and hold Seller harmless from and against all claims, demands and actions, including eviction or proceedings, by tenants under the Leases, local ordinance or other applicable law, or by vendors, suppliers and tradespeople providing goods and services to the Property, for the period after Closing. Such indemnity shall survive Closing and the execution and delivery of the Deed by Seller and shall not be merged therein.

(F)

(1) Purchaser shall pay for the cost of:

(a) Recording the Deed;

(b) Any documentary stamp taxes, deed taxes, transfer taxes, intangible taxes, mortgage taxes or other similar taxes, fees or assessments;

(c) Services incurred by Purchaser in performing any feasibility study and related tests and investigations;

(d) The Title Policy and any updates to the Title Commitment;

(e) All licenses, permits and authorizations necessary to operate the Property;

(f) Any escrow, closing fee or other costs associated with the Closing, unless otherwise specified pursuant to the terms of this Agreement;

(g) Notwithstanding anything to the contrary contained herein, if the transaction contemplated herein does not close for any reason other than the default of Seller, then in addition to the other charges to be paid by Purchaser hereunder, the cost of the Boundary Survey, or any costs associated with its update in contemplation of the sale, shall also be paid by Purchaser;

(h) All other costs, except as specifically allocated to Seller in Subsection 7(F)(2), below;

IF A SELLER-FINANCED TRANSACTION, IN ADDITION TO THE ABOVE, SUBSECTIONS 7(F)(1)(i), 7(F)(1)(j) and 7(F)(1)(k) APPLY (NOT APPLICABLE IF A CASH TRANSACTION)

(i) Any financing obtained by Purchaser in connection with its purchase of the Property pursuant hereto, including, without limitation all recording fees incurred in connection therewith and all other matters to be paid by Purchaser in connection with such financing as set forth in this Agreement;

(j) The ALTA/ACSM Survey to the extent specified in Section 5 (D); and

(k) The Mortgagee Commitment and the Mortgagee Policy.

(2) Seller shall pay for the cost of:

(a) Preparing the Deed;

(b) The Boundary Survey to the extent specified in Section 5 (A) (3) ; and

(c) The Title Commitment.

(3) Each party shall pay its own attorneys' fees.

Section 8. Notices.

Any notice provided or required to be given under this Agreement must be in writing and shall be served (and shall be deemed to have been served) (1) by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; (2) by delivering the same to such party or agent of such party, in person or by commercial courier; or (3) by facsimile, evidenced by confirmed receipt, or by depositing the same into the custody of a nationally recognized overnight delivery service such as Federal Express Corporation, Airborne Express, Emery or Purolator, addressed to the party to be notified. The parties' addresses are provided under Part I, Section 9.

From time to time either party may designate a different address for all purposes of this Agreement by giving the other party no less than ten (10) days advance notice of such change of address in accordance with the provisions hereof.

FDIC NATIONAL AUCTION 1993
(3025 to 53 Market St & 3101 to 57 Market St,
Philadelphia, PA)
(Index #521)

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(CASH/FINANCED SALE—AUCTION)

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Exhibit "C"— Service Contract(s)
Exhibit "D"— Surveyor's Certification
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Exhibit "F"— Property-type Provisions
Exhibit "G"— Pennsylvania Special Warranty Deed
Exhibit "H"— Bill of Sale
Exhibit "I"— Assignment of Service Contract(s)
Exhibit "J"— Assignment of Tenant Lease(s)
Exhibit "K"— Non-Foreign Affidavit
Exhibit "L"— Purchaser Eligibility Certification
Exhibit "M"— Assignment of Purchase and Sale Agreement

(IF A SELLER-FINANCED TRANSACTION, IN ADDITION TO THE ABOVE, THE FOLLOWING EXHIBITS ARE ALSO APPLICABLE)

Exhibit "N"— Note
Exhibit "O"— Mortgage
Exhibit "P"— Borrower's Loan Affidavit (Individual)
Exhibit "Q"— Borrower's Loan Affidavit (Corporation/Partnership)
Exhibit "R"— Financing Statement (State)
Exhibit "S"— Financing Statement (County)
Exhibit "T"— Financing Statement (Municipal)
Exhibit "U"— Counsel's Opinion Letter
Exhibit "V"— Assignment of Leases and Cash Collateral

(IF AN ANNOUNCEMENT IS MADE AT AUCTION WITH RESPECT TO THE PROPERTY, THE FOLLOWING EXHIBIT IS ALSO APPLICABLE.)

Exhibit "W"— Auction Day Announcement

Appendix

PURCHASE AND SALE AGREEMENT
(CASE/FINANCED SALE—AUCTION)

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into between Federal Deposit Insurance Corporation as Receiver for Meritor Savings Bank ("Seller") and Bert Landau, 3201 Arch St., Philadelphia, PA 19107 ("Purchaser").

WITNESSETH:

In consideration of the mutual covenants and agreements set forth herein, the parties hereto hereby agree as follows:

PART I

Part II of this Agreement, including the Exhibits, makes reference to the following items that must be completed or noted as "Not Applicable" prior to execution of this Agreement:

1. The real property is located at 3025 to 53 Market Street and 3101 to 57 Market Street, Philadelphia, Pennsylvania and is more fully described in Exhibit "A" and Section 1 of Part II.

2. The "Purchase Price" is seven million, six hundred thousand dollars ($7,600,000.00).

(A) This Agreement is (check only one):

__ cash sale

X seller-financed sale.

(B) In the case of a Seller-financed transaction, Purchaser has elected to obtain a loan for (check only one):

__ Sixty-five percent (65%)

X Seventy-five percent (75%)

of the Purchase Price. Accordingly, the Purchase Price consists of the following:

(1) "Cash Portion of the Purchase Price" in the amount of one million, nine hundred thousand ($1,900,000.00), which includes the Initial Deposit and Ernest Money, subject to Section 2 of Part II; and

(2) "Seller Financing Portion" in the amount of Five million, seven hundred thousand ($5,700,000.00).

SELLER'S INITIALS /s/(illegible)
PURCHASER'S INITIALS /s/(illegible)

3. The "Initial Deposit is Fifty Thousand Dollars ($50,000.00), payable in accordance with the provisions of Section 2 of Part II.

4. The "Earnest Money" is an amount equal to one million, five hundred twenty thousand ($1,520,000.00) which is the greater of Fifty Thousand Dollars ($50,000.00) or

(A) If a cash sale, ten percent (10%) ; and

(B) If a Seller-financed sale, twenty percent (20%)

of the Purchase Price. Such Earnest Money shall be payable in accordance with the provisions of Section 2 of Part II.

5. The "Broker" is Cushman & Wakefield, Inc. and its affiliates.

6. The "Title Company" which issued the Title Commitment dated March 19, 1993, is Stewart Title Guaranty Company.

7. The "Effective Date" is the date upon which this Agreement is executed by Seller, as evidenced by the insertion of such date below Seller's signature.

8. The "Closing Date" shall be no later than the first business day following the expiration of:

(A) If a cash sale, thirty (30) days from the Effective Date; or

(B) If a Seller-financed sale, ten (10) business days from the date Seller notifies Purchaser of the approval of its Loan Application [as defined in Subsection 3 (A) of Part II], unless otherwise agreed to by the parties.

9. For purposes of notice, as provided in Section 8 of Part II, the addresses of the parties shall be as follows:

If to Seller, to:	Federal Deposit Insurance Corporation as Receiver for Meritor Savings Bank c/o Janet Lengel One Research Drive Westborough, MA, 01581
Telephone No.:	(508) 389-5346
Fax No.:	(508) 389-5196

SELLER'S INITIALS /s/(illegible)

PURCHASER'S INITIALS /s/(illegible)

With copy to: Federal Deposit Insurance Corporation
c/o Frank S. Kressman—Legal Division
One Research Drive
Westborough, MA 01581

If to Purchaser, to: Bert Landau
Academic Properties, Inc.
3201 Arch St., Philadelphia, PA 19107

Attention: Bert Landau

Telephone No.: w:215-895-2800 H:215-937-1068

Fax No.: 215-895-2802

With copy to: Robert M. Segal
Wolf, Block, Schorr and Solis-Cohen
12th Floor Packard Bldg.
Philadelphia, PA 19102 215-977-223

IF THIS TRANSACTION IS A SELLER-FINANCED TRANSACTION, THE FOLLOWING SECTIONS 10, 11 AND 12 WILL APPLY. IN ADDITION, IN PART II OF THIS AGREEMENT THE FOLLOWING SECTIONS WILL ALSO BE APPLICABLE:

—2 (A)
—2 (B)
—3
—4
—5(D)
—6(A) (11)
—6 (A)(12)
—7(B)(2)(b)
—7(B)(2)(c)
—7(B)(2)(d)
—8
—9
—10
—11

10. The "Loan Application Fee" is Five Thousand Eighty ($5,080.00) Dollars and No/100, is non-refundable, and is payable in accordance with the provisions of Section 3(A) of Part II.

SELLER'S INITIALS /s/(illegible)
PURCHASER'S INITIALS /s/(illegible)

(E) Upon completion of the Closing, Seller shall deliver to Purchaser possession of the Property free and clear of all tenancies and contracts of every kind and parties in possession, except for tenants or parties in possession listed on the Rent Roll Affidavit, except for Permitted Exceptions and except for the Service Contracts, with the Property in the same condition as of the date hereof, normal wear and tear excepted. Purchaser hereby agrees to defend (with counsel acceptable to Seller), indemnify and hold Seller harmless from and against all claims, demands and actions, including eviction proceedings, by tenants under the Leases, local ordinance or other applicable law, or by vendors, suppliers and tradespeople providing goods and services to the Property, for the period after Closing. Such indemnity shall survive Closing and the execution and delivery of the Deed by Seller and shall not be merged therein.

(F)

(1) Purchaser shall pay for the cost of:

(a) Recording the Deed;

(b) Any documentary stamp taxes, deed taxes, transfer taxes, intangible taxes, mortgage taxes or other similar taxes, fees or assessments;

(c) Services incurred by Purchaser in performing any feasibility study and related tests and investigations;

(d) The Title Policy and any updates to the Title Commitment;

(e) All licenses, permits and authorizations necessary to operate the Property;

(f) Any escrow, closing fee or other costs associated with the Closing, unless otherwise specified pursuant to the terms of this Agreement;

(g) Notwithstanding anything to the contrary contained herein, if the transaction contemplated herein does not close for any reason other than the default of Seller, then in addition to the other charges to be paid by Purchaser hereunder, the cost of the Boundary Survey, or any costs associated with its update in contemplation of the sale, shall also be paid by Purchaser;

(h) All other costs, except as specifically allocated to Seller in Subsection 7(F)(2), below;

IF A SELLER-FINANCED TRANSACTION, IN ADDITION TO THE ABOVE, SUBSECTIONS 7(F)(1)(i), 7(F)(1)(j) and 7(F)(1)(k) APPLY (NOT APPLICABLE IF A CASH TRANSACTION)

(i) Any financing obtained by Purchaser in connection with its purchase of the Property pursuant hereto, including, without limitation all recording fees incurred in connection therewith and all other matters to be paid by Purchaser in connection with such financing as set forth in this Agreement;

(j) The ALTA/ACSM Survey to the extent specified in Section 5(D); and

(k) The Mortgagee Commitment and the Mortgagee Policy.

(2) Seller shall pay for the cost of:

(a) Preparing the Deed;

(b) The Boundary Survey to the extent specified in Section 5(A)(3); and

(c) The Title Commitment.

(3) Each party shall pay its own attorneys' fees.

Section 8. Notices.

Any notice provided or required to be given under this Agreement must be in writing and shall be served (and shall be deemed to have been served) (1) by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; (2) by delivering the same to such party or agent of such party, in person or by commercial courier; or (3) by facsimile, evidenced by confirmed receipt, or by depositing the same into the custody of a nationally recognized overnight delivery service such as Federal Express Corporation, Airborne Express, Emery or Purolator, addressed to the party to be notified. The parties' addresses are provided under Part I, Section 9.

From time to time either party may designate a different address for all purposes of this Agreement by giving the other party no less than ten (10) days advance notice of such change of address in accordance with the provisions hereof.

EXHIBIT "M"

ASSIGNMENT OF PURCHASE AND SALE AGREEMENT

THIS ASSIGNMENT OF PURCHASE AND SALE AGREEMENT (this "Assignment") is made and entered into by and between Bert Landau ("Assignor") and Academic Properties, Inc. ("Assignee").

WITNESSETH:

WHEREAS, Assignor, as Purchaser, and Federal Deposit Insurance Corporation as Receiver for Meritor Savings Bank ("Seller"), as Seller, entered into that certain Purchase and Sale Agreement (the "Contract"), dated December 14, 1993, for the sale of property commonly known as 3025 to 53 Market Street and 3101 to 57 Market Street, Philadelphia, Pennsylvania which Contract is incorporated herein by reference, pursuant to which Contract Seller has agreed to sell and Assignor has agreed to purchase the property described in the Contract upon the terms and conditions contained in the Contract; and

WHEREAS, Assignee desires to acquire all of the right, title and interest of Assignor in, to and under the Contract, and agrees to make all representations, warranties and certifications to Seller as set forth in the Contract and the forms attached thereto:

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained and other good and valuable consideration in hand paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby sells, transfers, assigns and conveys to Assignee all of Assignor's right, title and interest in, to and under the Contract.
2. Assignee hereby accepts the foregoing assignment, and hereby assumes and covenants to perform all duties and obligations of Assignor under the Contract and the forms attached thereto.
3. Assignee is able to, and hereby does, make all of the representations, warranties and certifications to Seller as set forth in the Contract, including, but not limited to those contained in Section 6 of Part II of the Contract, captioned "Representations and Warranties" except that for purposes of this paragraph 3, the term "Purchaser" in all of said warranties and representations shall mean Assignee.

4. Assignor hereby releases all claims to the Earnest Money held in connection with the Contract. Upon the execution of this Assignment, Assignee hereby agrees to reimburse Assignor for the amount of all such Earnest Money.
5. Unless Seller shall consent to this Assignment in writing, this Assignment shall be null and void and of no force or effect.
6. Seller's consent to this Assignment shall not constitute, imply, require, obligate, be, or be deemed to be, an approval of Assignee by Seller for seller financing of the property described in the Contract, which approval may in all events be withheld by Seller in its sole and absolute discretion.
7. This Assignment shall be governed by and construed in accordance with the laws of the state where the Property is located and the laws of the United States applicable to transactions in such state.
8. This Assignment shall inure to the benefit of, and be binding upon, Assignor and Assignee and their respective heirs, personal representatives, successors and assigns.
9. In the event Seller consents in writing to this Assignment, neither Assignee nor Assignor shall have the right to further assign its respective obligations under this Assignment unless Seller shall consent in writing to such further assignment, which consent may be withheld by Seller in its sole and absolute discretion.
10. This is the entire agreement between the parties hereto, and may not be amended or modified in any manner without the written approval of the parties hereto and, if Seller consents to this Assignment, the written approval of Seller.
11. This Assignment may be executed in multiple counterpart copies, all of which shall be deemed originals, but which will evidence one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment to be effective as of December 14, 1993.

ASSIGNOR:
By: /s/Bert Landau
Name: Bert Landau
Title: Senior Vice President

ASSIGNEE:
Academic Properties, Inc.
By: /s/John D. Davis
Name: John D. Davis
Title: Chief Operating Officer
Tax I.D. No.: 23-2411680

CONSENTED TO BY SELLER:

Federal Deposit Insurance Corporation as Receiver for Meritor Savings Bank

By: /s/Mary Ann Richardson
Name: Mary Ann Richardson
Title: Attorney-In-Fact
Date: February 10, 1994